

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

J. P. WASHINGTON, ID # 1163427,)	
Petitioner,)	
vs.)	No. 3:05-CV-1932-N (BH)
)	ECF
NATHANIEL QUARTERMAN, Director,)	Referred to U.S. Magistrate Judge
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	
Respondent.)	

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of Reference dated November 15, 2007, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

On July 11, 2007, the Fifth Circuit Court of Appeals remanded this case for determination of whether petitioner's Notice of Appeal was delivered to prison officials for mailing on or before April 23, 2007. By Order of Reference dated November 15, 2007, the matter was referred to the undersigned Magistrate Judge for findings and recommendations.

To ascertain whether petitioner timely filed the notice, petitioner was sent a questionnaire requesting that he provide the date he deposited the notice in the internal mail system of his institution.¹ Petitioner responded and verified that he placed his Notice of Appeal in the prison mail system on April 18, 2007. Using that date as the date of filing, it appears that petitioner timely filed his notice of appeal. That date is not necessarily inconsistent with the date this Court received the

¹ Under the prison mailbox rule, a federal habeas petition is deemed filed when the prisoner delivers the petition to prison authorities for mailing to the court. See *Coleman v. Johnson*, 184 F.3d 398, 401 (5th Cir. 1999).

Notice of Appeal on May 1, 2007, and it is entirely consistent with a certificate of inmate trust account dated April 18, 2007, that accompanied petitioner's application to proceed *in forma pauperis* on appeal, which was also received on May 1, 2007.

II. RECOMMENDATION

For the foregoing reasons, it is **RECOMMENDED** that the Court find that petitioner timely filed his notice of appeal by placing it in the prison mail system on April 18, 2007; notify the Fifth Circuit Court of Appeals of that finding; and return the case to the Fifth Circuit for further proceedings as may be appropriate.

SIGNED this 29th day of November, 2007.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE